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**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Charles M. Howell

Case Number: 04-08451

Names of the Respondents  
American General Securities, Inc.  
Leroy Jack Smith

Hearing Site: New Orleans, LA

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Charles M. Howell, hereinafter referred to as "Claimant": Lee Bowie, Esq., Davidson, Bowie & Sims, PLLC, Jackson, Mississippi.

For Respondent American General Securities, Inc. ("AGSI"): John N. Bolus, Esq. and Kip A. Nesmith, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

For Respondent Leroy Jack Smith ("Smith"): E. Britton Monroe, Esq., Mickey B. Wright, Esq., and Laura A. Moncrief, Esq., Lloyd, Gray & Whitehead, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: December 14, 2004.

Claimant signed the Uniform Submission Agreement: August 24, 2004.

Statement of Answer filed by Respondent AGSI on or about: February 3, 2005.

Respondent AGSI signed but did not date the Uniform Submission Agreement.

Statement of Answer filed by Respondent Smith on or about: February 7, 2005.

Respondent Smith signed the Uniform Submission Agreement: January 21, 2005.

Reply to Respondents' respective Statements of Answer filed by Claimant on or about: November 14, 2005.

Motion for Summary Adjudication and Brief in Support of Motion for Summary Adjudication filed by Respondent Smith on or about: November 7, 2005.

Motion for Summary Judgment or, in the Alternative, Motion to Strike filed by Respondent AGSI on or about: November 8, 2005.

Response to Respondents' respective Motions for Summary Adjudication filed by Claimant on or about: November 14, 2005.

Reply Brief in Support of Motion for Summary Judgment or, in the Alternative, Motion to Strike filed by Respondent AGSI on or about: November 29, 2005.

Reply to Claimant's Opposition to Motion for Summary Adjudication filed by Respondent Smith on or about: November 30, 2005.

Supplemental Response to Respondent AGSI's Reply in Support of Motion for Summary Judgment filed by Claimant on or about: December 2, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) violations of NASD Rules 2110, 2120, 3010 and 2310; 3) unsuitability 4) common law fraud; 5) misrepresentation; 6) self-dealing; 7) breach of contract; 8) failure to supervise; 9) violation of unspecified Mississippi Securities Laws and Rules; and, 10) negligence. The causes of action relate to Claimant's investment in the Hartford Capital Manager variable annuity.

Unless specifically admitted in its Answer, Respondent AGSI denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Respondent Smith denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) actual damages in excess of \$11,000.00; 2) unspecified punitive damages; 3) interest at 8% as prescribed by Mississippi law; 4) costs; 5) expenses; 6) fees; 7) attorneys' fees; and, 8) such other relief as the undersigned arbitrator (the "Arbitrator") deemed just and proper.

Respondent AGSI requested: 1) that the Statement of Claim be dismissed in its entirety; 2) that all costs and forum fees in these proceedings be assessed against Claimant; and, 3) such other further relief as the Arbitrator deemed just and proper.

Respondent Smith requested: 1) that the Arbitrator dismiss all of Claimant's claims with prejudice; 2) attorney's fees; 3) litigation costs; and, 4) expungement of all references to this matter from Smith's NASD Central Registration Depository ("CRD") records.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about December 22, 2005, the Arbitrator issued an order which denied Respondents' respective Motions for Summary Adjudication.

On or about January 4, 2006, the parties informed the NASD that they had reached a settlement in this matter and requested that a Stipulated Award be entered.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings and the agreement between the parties, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims against Respondent Smith are dismissed in their entirety, with prejudice, based on the settlement agreement reached between the parties.

Claimant's claims against Respondent AGSI are dismissed in their entirety, with prejudice, based on the settlement agreement reached between the parties.

Each party shall bear their respective attorneys' fees and other expenses already incurred.

Any and all claims for relief not specifically addressed herein are denied and dismissed with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 125.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent AGSI is a party and a member firm.

Member surcharge = \$ 425.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 per session = \$1,350.00

April 21, 2005	1 session
May 20, 2005	1 session
November 9, 2005	1 session

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Total Forum Fees	= \$1,350.00
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Pursuant to the agreement of the parties, the Panel has assessed forum fees in the amount of \$450.00 to Claimant, forum fees in the amount of \$450.00 to Respondent AGSI, and forum fees in the amount of \$450.00 to Respondent Smith.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs assessed during these proceedings.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$125.00
Forum Fees	= \$450.00
Total Fees	= \$575.00
Less payments	= \$575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent AGSI is solely liable for:

Member Fees	= \$425.00
Forum Fees	= \$450.00
Total Fees	= \$875.00
Less payments	= \$425.00
Balance Due NASD Dispute Resolution	= \$450.00

3. Respondent Smith is solely liable for:

Forum Fees	= \$450.00
Total Fees	= \$450.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$450.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Alisa Ruth

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Public Arbitrator

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**Arbitrator's Signature**

/s/  
Alisa Ruth  
Public Arbitrator

Signature Date

March 6, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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Arbitrator's Signature



Alisa Ruth  
Public Arbitrator

March 3, 2006  
Signature Date

Date of Service (For NASD Dispute Resolution office use only)